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NO. 85-1179

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ARNOLD SONDEREGGER,

Petitioner.

vs.

E. F. HUTTON & COMPANY, INC.;
NORMAN W. SINGER; and
ROBERT A. MUELLER,

Respondents.

SUPPLEMENTAL BRIEF BY THE PETITIONER

ON PETITIONER FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, IN PROPRIA PERSONA
628 S. ARDMORE, APT. 22, LOS ANGELES,
CALIFORNIA 90005

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SUPPLEMENTAL BRIEF BY PETITIONER

The Supreme Court Rule 22.6. The case of Fjelstad v American Honda Motor Co. 762 F2d 1334. June 25, 1985 for the 9th Cir. was not available at party's last filing. To get in the Federal Reporter takes aaout six months.

Before FARRIS, ALARCON & FERGUSON CIRCUIT JUDGES, THE Court of Appeals, FARRIS, circuit judge hold, p. 1342,

"(15) Sanctions imposed under Rule 37 (b)(2)""must be specifically related to the particular claim' which was at issue in the order to provide discovery."" Insurance Corp. of Ireland, 456 U.S. at 707, 102 S.CT. at 2106. "This requirement reflects the rule of Hammond Packing Co. vs Arkansas, 212 U.S. 322, 29 S.CT. 370, 53 L. Ed. 530 (1909), which held that striking the answer and entering default judgment against a corporate defendant that refused to provide any documents or to permit its officers to be deposed did not deny the defendant due process because its refusal to produce material evidence created a presumption that

"its asserted defense was meritless.

"Unlike the defendant's refusal to to disclose any material information in Hammond Packing, American Honda's failure to supplement its response to the interrogatory concerning potential witnesses does not give rise to a presumption that the denials in its answer to the complaint are untrue or that its defenses are meritless." Fjelstad v American Hona Co. was REVERSED and Remanded.

In the present case the US. DIST. JUDGE, in the Mem. of Decision quoted a caution from the case cited, which was Whlie v R.J. REYNOLDS IND. INC.709 F2d 585, at page 591, (9th Cir.)

"..Sanctions may violate due process when imposed only for purposes of

"punishmnent of violations of court orders rather than to redress a discovery violation which threatens the rightful decision of the case."

In the Wylie case supra, p. 589, "The district court ... based dismissal ...on two findings:(1) knowingly false denials of rebating by PFEL and its counsel, Aliota & Alita; and(2) the Aliota firm's deliberate efforts on rebating."

Thus, in the present case Petitioner made new discoveries of fraud, such as E.F.HUTTON & COMPANY, INC. after receiving 115 shares from MERRILL LYNCH, PIERCE, FENNER & SMITH INC. on the top of the monthly statement changed the bottom of the page to read 215 shares received and made a false security

of 100 shares of IBM in the value of the stocks and even paid a false dividend for 6½ months, which was concealing the fraud, and made it an intentional additional fraud. The accounting found it on the First Margin call, but the Petitioner did not find the fraud until late in this law suit.

Therefore, the Wylie case supra was in its intent for the Petitioner, who continued to make discovery in his motion to file a related-back 3rd Amended complaint with a demand for trial by jury, and the proposed 3rd Amend. Cpl. with 43 pages of facts, testimony and 15 exhibits of documentary evidence. This was on July 5, 1985. and on July 2, 1984

at the hearing by U.S.DIST. JUDGE, no facts or law were allowed to be presented and in the Civil Minutes,

"Court issues a tentative ruling."

"..."

"Court denies plaintiff's motion for leave to file a related back 3rd amended complaint."

Whereupon, the Petitioner, lodged on July 5, 1984(a month later than the original filing of 3rd. and before the July 12, 1984 mem. of decision of the U.S. Dist. Judge, the following:

"THIS IS AN ADDITION TO THE MOTION TO FILE THE THIRD AMENDED COMPLAINT, which on page 5, cited the Ninth Cir. case of ARRINGTON vs. MERRILL LYNCH, PIERCE, FENNER & SMITH INC. 651 F2d 615 (1981), which thus, provided for the U.S.DIST. JUDGE to take JUDICIAL NOTICE

of the case before her July 12, 1984 Memo. of Dec. From Arrington sup. 621, "One set of misrepresentations concerned the risks of stock purchases to injure the Arringtons. The other dealt with predicted short-term preformance of certain stocks."

The Ninth Cir. affirmed liability for damages awarded by the U.S.DIST. COURT.

In both the filed First Amended Conplaint, and in the3rd amended complaint the same causes of action upon which relief can be granted were alleged, and with facts.

In the 3rd. Amend. Cpl. the risks of not disclosing the double loss from amargin call, and misrepresenting, and refusing to sell in a high interest

delining market, which consumed Petitioner's account wer alleged and factually presented on paragraphs 32, 33 & 34 of the lodged 3rd amend. cpl., that showed by the 9th cir. case law that the Petitioner had a meritorius case, that had causes of action upon which relief could be granted.

At the July 2, 1984 hearing, Petitiner and in an ex-parte application asked for an extention of time to answer interog!s and both were denied, except a week to answer 11 personal questions already answered in his 4 hour deposition.

Petioner continued answering interrog.'s on the record July 1q, 1984, no. 23 &24 of factual testimony, On July 27, 1984 ans. on no. 34 on the merits., On Aug. 5, 1984 made a motion for reconsideration that had 12 pages of facts, testimonials and cases.

On Aug 22, 1984 the U.S. DIST. JUDGE denied the motion for reconsideration and cited Wylie supra, and misapplied the case not to allow more answers to interrogatories, because unlike the Wylie case the Petitioner never was hiding discovery, but was continuing to make discovery.

On Aug. 30, 1984 the U.S.DIST. had a last chance before denying the motion of the Petitioner for Relief From Judgment by a motion under F.R.C.P. Rule 60, to set aside the judgment on dismissal as being void.

The U.S. DIST. JUDGE took Juidical Notice of the Whlie case, cited twice in her decisions, bu failed to realize, the memo of dec. was for punishment and not for discovery and therefore violated the 5th Amend. to U.S. Const. and therefor had no jurisdiction and was void.

Both the Wylie case supra, and the Fjelstad v American Honda Co. 762 F2d 1334 (9th Cir) quoted from the S.CT. case of Insurance Corp. of Irleland 102 S, Ct, at 2106, that reflected Hammond Packing Co. 29 S.CT. 370.

Petitioner showed the dismissal was for punishment, and to prevent the Petitioner from dicoverying the frauds, and that the Petitioner had a meritoriou case.

If answers were not as fast as wanted a sanction of giving Repsondents more time to make any answer on the merits would have been fair.

In conclusion Petitioner prays this case be reversed and remanded to the 9th cir. for proceedings on the Merits. Respectfully presented by ARNOLD SONDEREGGER, 628 S. ARDMORE, apt. 22, Los Angeles, CA. 90005

Arnold Sonderegger